817; *Wightman* v. *Wightman*, 45 Ill. 167; *Chase* v. *Ingalls*, 97 Mass. 524. *Contra*, *Coughlin* v. *Ehlert*, 39 Mo. 285; *Steller* v. *Steller*, 25 Mich. 159. *Cf. Haines* v. *Haines*, 35 Mich. 138. See *Murray* v. *Murray*, 84 Ala. 363, 4 So. 239; 11 HARV. L. REV. 552. Granting that imprisonment for failure to pay alimony is constitutional, some cases hold that a court of equity is without power to punish a defendant for failure to pay alimony. *Ex parte Todd*, 119 Cal. 57, 50 Pac. 1071; *Messervy* v. *Messervy*, 85 S. C. 189, 67 S. E. 130. However, the objection does not rest in lack of power, but rather in the practical difficulty of requiring a person to find work while imprisoning him during the period in which he is supposed to find it. *Webb* v. *Webb*, 140 Ala. 262, 37 So. 96. But the application of pressure in such a case will often energize a defendant without ambition, or bring a contumacious one to terms. So the balance of convenience would seem to favor commitment in this class of cases. *Lester* v. *Lester*, 63 Ga. 356; *Lansing* v. *Lansing*, 41 How. Prac. (N. Y.) 248.

DUTY OF CARE — TRESPASSERS — MISFEASANCE AND NONFEASANCE — MORAL DUTY. — Plaintiff's intestate, while riding as a trespasser on the top of a freight car of a railroad company, was struck by a wire of the defendant company, which a storm had caused to sag so low as to endanger the safety of all persons on cars of that character and which the defendant had failed to repair. As a result he was thrown to the ground and killed. There was evidence tending to show that the defendant was a trespasser in carrying its wires over the railroad company's line. *Held*, that the plaintiff may recover. *Ferrell* v. *Durham Traction Co.*, 90 S. E. 893 (N. C.).

As the deceased was a trespasser and the death was occasioned by a mere condition of the premises, it seems clear that no recovery could be had against the railroad company. See Jeremiah Smith, "Landowners' Liability to Children," 11 HARV. L. REV. 349. Now a landowner, or those claiming under him, may recover from one having a right to use the premises for nonfeasance as to a condition of the premises over which he has been given control. *Hawkin* v. *Shearer*, 56 L. J. (Q. B.) 284. *Cf. Elliott* v. *Roberts & Co.*, 32 Times L. R. 478. See 30 HARV. L. REV. 186. So it would seem, on a doctrine akin to estoppel, that recovery might also be had from a trespasser under similar circumstances. Hence, in the principal case, if the deceased had been an employee of the railroad company, the defendant would be liable. But, as both the deceased and the defendant were trespassers upon the premises of another, its liability must be determined upon elementary principles. Where there is foreseeability of danger to others, one must modify his conduct accordingly. See *Garland* v. *B. & M. R. Co.*, 76 N. H. 556, 86 Atl. 141. So if the death had been caused by a continuously active force, such as electricity, the defendant would be liable. See 28 HARV. L. REV. 818. But here there was no action by the defendant; its liability, if any, must be founded upon nonfeasance. But there was no legal relation between the defendant and the deceased from which a duty to act would arise. It would seem that the case is another instance of liability founded upon moral duty. See 30 HARV. L. REV. 289. But it is of especial significance, as hitherto the so-called "humanitarian doctrine" has been applied only to railroads and other inherently dangerous instrumentalities.

EVIDENCE — OPINION EVIDENCE — NON-EXPERT OPINION AS TO AGE. — In a prosecution for selling liquors to minors, non-expert witnesses were allowed to give their opinions, based upon the appearance of the vendees, that the vendees were under eighteen years of age. *Held*, that the evidence was improperly admitted. *State* v. *Koettgen*, 99 Atl. 400 (N. J.).

Whether appearance may be used to prove age, is a matter to be determined, like all questions of relevancy, by a balance of convenience; the probative value of the evidence must outweigh any tendency to prejudice or confuse the jury. Clearly the probative value of the appearance of a grown person is

high — the counterbalancing tendencies are slight. Accordingly, the courts usually allow the jury to consider the appearance of the person whose age is in question. *Commonwealth* v. *Hollis*, 170 Mass. 433, 49 N. E. 632; *State* v. *Thomson*, 155 Mo. 300, 55 S. W. 1013. See WIGMORE, EVIDENCE, § 222. *Contra, Ihinger* v. *State*, 53 Ind. 251. But the fact that appearance is clearly relevant is not decisive of the question whether opinion of non-experts based upon appearance is competent. The general rule for the admission of non-expert opinion is that the facts upon which it is based must be such that they cannot adequately be described to the jury, and they must be such as can be readily comprehended by an ordinary observer. See *Commonwealth* v. *Sturtivant*, 117 Mass. 122, 133; WIGMORE, EVIDENCE, § 1924. Such testimony is really a necessary summary of facts. Under this rule, non-experts have been allowed to give their opinions that a person was insane, or scared, or intoxicated, or even that a spot was made by blood. *Connecticut Mutual Life Ins. Co.* v. *Lathrop*, 111 U. S. 612; *State* v. *Ramsey*, 82 Mo. 133; *People* v. *Eastwood*, 14 N. Y. 562; *Greenfield* v. *People*, 85 N. Y. 75. Opinion as to age, based on appearance, meets these conditions, and so most courts have admitted it. *State* v. *Bernstein*, 99 Iowa 5, 68 N. W. 442; *Jones* v. *State*, 32 Tex. Cr. App. 108, 22 S. W. 149. *Cf. Commonwealth* v. *O'Brien*, 134 Mass. 200. See *Elsner* v. *Supreme Lodge*, 98 Mo. 640, 645, 11 S. W. 991, 992; WIGMORE, EVIDENCE, § 1974. *Contra, Marshall* v. *State*, 49 Ala. 21. Moreover, the application of the rules governing this sort of evidence should rest in the discretion of the trial court, and its decision ought not, ordinarily, to be reversed by a reviewing court. See THAYER, PRELIMINARY TREATISE ON EVIDENCE, 516.

EVIDENCE — TESTIMONY OF PARTIES IN SUIT FOR DIVORCE — MUTUAL CORROBORATION. — In a suit for divorce on the ground of adultery, the petitioner testified to the fact and another witness testified to a full confession by the respondent. By the settled law of the state neither the uncorroborated confession of the defendant nor the uncorroborated testimony of the petitioner is sufficient to warrant a decree. *Held*, that a divorce cannot be granted on mutual corroboration. *Garrett* v. *Garrett*, 98 Atl. 848 (N. J.).

The law of the state in the principal case that a decree of divorce will not be granted upon the uncorroborated testimony of the petitioner is supported by numerous other jurisdictions. *Reid* v. *Reid*, 112 Cal. 274, 44 Pac. 564; *Grover* v. *Grover*, 63 N. J. Eq. 771, 50 Atl. 1051. See MINN. GEN. STAT. 1913, § 8465. See 3 WIGMORE, EVIDENCE, § 2046. *Contra, Baker* v. *Baker*, 195 Pa. St. 407, 46 Atl. 96. So likewise the rule that a decree will not ordinarily be granted upon the uncorroborated confession of the respondent has much support. *Betts* v. *Betts*, 1 Johns. Ch. (N. Y.) 197; *Kloman* v. *Kloman*, 62 N. J. Eq. 153, 49 Atl. 810. See 3 WIGMORE, EVIDENCE, § 2067. But it cannot be laid down as either logically or legally impossible that two pieces of evidence, either insufficient alone, should be mutually corroborative. See JOY, EVIDENCE OF ACCOMPLICES, 100 *ff.* Whether mutual corroboration is equivalent to corroboration *aliunde* must depend upon the reason why corroboration is required in each case. The requirement that the petitioner's testimony be corroborated is merely a survival, in large part, of the ancient rule of the Roman and Canon law that more than one witness is necessary to prove any fact. See 3 WIGMORE, EVIDENCE, §§ 2032, 2046. Therefore, since the respondent is a second witness, his confession is sufficiently corroborative. But the reason for refusing to grant a decree on the uncorroborated confession of the respondent is more than merely quantitative; it is the danger of collusion. It should not be within the power of the parties to sever the marriage relation at will. *Holland* v. *Holland*, 2 Mass. 154. Corroboration by the petitioner cannot, therefore, satisfy this rule. And, since both rules must be satisfied to warrant a decree, the decision in the principal case must follow. Such is the conclusion reached in other cases. *Johnson* v. *John-*